



BILLING CODE: 3710-08

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 518

The Freedom of Information Act

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is amending its rule on notification of the Army Litigation Division when a request is made for a record related to pending litigation involving the United States in order to correct the mailing address in § 518.15 and § 518.18 . The address for notifying the U.S. Army Litigation Division of record requests related to litigation involving the United States has changed.

EFFECTIVE DATE: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: MAJ Lisa R. Bloom, 703-693-1009, email: lisa.bloom@us.army.mil.

SUPPLEMENTARY INFORMATION:

A. Background

In the February 26, 2006, issue of the **Federal Register** (71 FR 9222), the Department of the Army issued a final rule. This final rule corrects the mailing address for the Army Litigation Division. The Army Litigation Division moved to Fort Belvoir in September 2011.

B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the rule change does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

C. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the rule change does not include a mandate that may result in estimated costs to State, local or tribal governments in the aggregate, or the private sector, of \$100 million or more.

D. National Environmental Policy Act

The Department of the Army has determined that the National Environmental Policy Act does not apply because the rule change does not have an adverse impact on the environment.

E. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act does not apply because the rule change does not involve collection of information from the public.

F. Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the rule change does not impair private property rights.

G. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 and Executive Order 13563 this rule change is not a significant regulatory action. As such, the rule is not subject to Office of Management and Budget review under section 6(a)(3) of the Executive Order.

H. Executive Order 13045 (Protection of Children from Environmental Health Risk and Safety Risks)

The Department of the Army has determined that according to the criteria defined in Executive Order 13045 that Executive Order does not apply.

I. Executive Order 13132 (Federalism)

The Department of the Army has determined that according to the criteria defined in Executive Order 13132 that Executive Order does not apply because the rule change will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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Chief, U.S. Army Litigation Division

List of Subjects in 32 CFR Part 518

Freedom of information.

For reasons stated in the preamble 32 CFR part 518 is amended as follows:

PART 518 – THE FREEDOM OF INFORMATION ACT

1. The authority citation for part 518 continues to read as follows:

Authority: 5 U.S.C. 551, 552, 552a, 5101-5108, 5110-5113, 5115, 5332-5334, 5341-42, 5504-5509, 7154; 10 U.S.C. 130, 1102, 2320-2321, 2328; 18 U.S.C. 798, 3500; 31 U.S.C. 3710; 35 U.S.C. 181-188; 42 U.S.C. 2162; 44 U.S.C. 33; and Executive Order 12600.

2. Revise paragraphs (b)(5)(i) and (iii) of § 518.15 to read as follows:

§ 518.15 General Provisions.

* * * * *

(b) * * *

(5) * * *

(i) Litigation. Each request for a record related to pending litigation involving the United States will be referred to the staff judge advocate or legal officer of the command. He or she will promptly inform the Litigation Division, U.S. Army Legal Services Agency (USALSA), of the substance of the request and the content of the record requested. (Mailing address: Army Litigation Division, U.S. Army Legal Services Agency (USALSA), 9275 Gunston Road, Fort Belvoir, VA 22060. If information is released for use in litigation involving the United States, the Chief, Army Litigation Division (AR 27-40, para 1-4d) must be advised of the release. He or she will note the release in such investigative reports. Information or records normally exempted from release (i.e., personnel and medical records) may be releasable to the judge or court concerned, for use in litigation to which the United States is not a party. Refer such

requests to the local staff judge advocate or legal officer, who will coordinate it with the Litigation Center, USALSA.

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(iii) Contract disputes. Each request for a record that relates to a potential contract dispute or a dispute that has not reached final decision by the contracting officer will be treated as a request for procurement records and not as litigation. However, the officials will consider the effect of release on the potential dispute. Those officials may consult with the USALSA, Contract and Fiscal Law Division. (Mailing address: Contract and Fiscal Law Division, U.S. Army Legal Services Agency (USALSA), 9275 Gunston Road, Fort Belvoir, VA 22060. If the request is for a record that relates to a pending contract appeal to the Armed Services Board of Contract Appeals, or to a final decision that is still subject to appeal (i.e., 90 days have not lapsed after receipt of the final decision by the contractor) then the request will be: Treated as involving a contract dispute; and referred to the USALSA, Contract and Fiscal Law Division.

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3. Revise paragraph (f)(2) of § 518.18 to read as follows:

§ 518.18 Judicial actions.

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(f) * * *

(2) Responsibility for FOIA litigation. For the Army, under the general oversight of the OGC, FOIA litigation is the responsibility of the General Litigation Branch, Army Litigation Division. If you are notified of a FOIA lawsuit involving the Army, contact the General Litigation Branch immediately at: General Litigation Branch, Army

Litigation Division, U.S. Army Legal Services Agency (USALSA), 9275 Gunston Road, Fort Belvoir, VA 22060. The General Litigation Branch will provide guidance on gathering information and assembling a litigation report necessary to respond to FOIA litigation.

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